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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,329	04/15/2002	Clifford Bruce Pollitt	6385	2371
7590	03/30/2005			EXAMINER
Arlene J. Powers Gauthier & Connors LLP 225 Franklin Street Suite 3300 Boston, MA 02110			WYROZEBSKI LEE, KATARZYNA I	
			ART UNIT	PAPER NUMBER
			1714	
DATE MAILED: 03/30/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/914,329	POLLITT, CLIFFORD BRUCE	
	Examiner	Art Unit	
	Katarzyna Wyrozebski	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 09 August 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-9 and 11-13 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-9 and 11-13 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
5) Notice of Informal Patent Application (PTO-152)
6) Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4-6, 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Pollitt (WO 98/44033) in view of evidence in applicant's response dated 6/1/2004.

The prior art '033 discloses composition for binding mixture. According to claims of the prior art '033, composition comprises polybutadiene in liquid form and flow control solvent.

According to the specification of '033 (page 2) the composition further comprises colorant and deodorizing additive. The flow controlling solvent is benzene (page 1, 2nd paragraph). The binding mixture is utilized with particulate matter such as ground glass (page 1, 3rd paragraph).

The mixture of '033 is mixed in air-tight container, which simply means in air-free environment.

In the light of the above disclosure, the prior art '033 anticipates the requirements of claims rejected above.

3. Claims 1-9, 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Pollitt (GB 2,322,630) in view of evidence in applicant's response dated 6/1/2004.

The prior art '630 discloses settable composition mixture comprising polybutadiene and ground glass (Abstract).

According to claims of '630, the mixture comprises ground glass or mixture of ground glass with silica sand. Sand can replace 0.1-99.9% of ground glass (page 1, 3rd paragraph). Most preferred sand is kiln dried silica sand.

The composition further comprises colorant and benzene wherein benzene is disclosed as flow control agent (page 1, 6th paragraph). Benzene is de-aromatized (claim 10).

Polybutadiene is in its liquid form (claim 12) and the entire mixture is processed and kept in air-free environment (claim 11).

According to examples, polybutadiene is utilized in amount of 2-4 % by volume, benzene is utilized in an amount of 0.1-0.4 % and pigment in an amount of 0.1-0.5% with the balance of ground glass or mixture of ground glass and silica sand. The balance, would therefore equal to approximately 95%, 99.9 % if which can be silica sand.

In the light of the above disclosure, the prior art '630 anticipates requirements of claims rejected above.

4. Claims 1-9, 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Pollitt (WO 98/21159) in view of evidence in applicant's response dated 6/1/2004.

The prior art '159 discloses settable mixture comprising liquid polybutadiene, flow enhancing material and particulate material (Abstract).

According to claims of the prior art '159, composition comprises dry sand, flow control agent is benzene or aliphatic hydrocarbon and polybutadiene is in liquid form.

According to claims polybutadiene is utilized in an amount of 1.5-6% by volume and the composition is bagged in air-tight environment. According to examples, aroma-free benzene is utilized in amount of 0.1-0.4 % by volume while the kiln dried silica sand constitutes a balance (page 5). The balance therefore would be approximately 95 %. In the example, where carbon fibers are utilized, the amount of sand is 90%.

Preferred sand as it is mentioned above is kiln dried silica sand, which is special fraction size, and after drying can absorb water from the atmosphere, which would make the water content as that of the present invention.

In the light of the above disclosure, the prior art '159 anticipates the requirement of claims rejected above.

After careful reconsideration of the present invention, and reconsideration of previous arguments applicants raised, it is examiner's position that response applicants response dated 6/1/2004 further supports examiner's position for following reasons.

Applicants response comprises pages of data showing sand content. Some of the data that was provided by the applicants showed sands other than silica sand so they will not be considered, however those that do show silica sand show that outside of one example the content of aluminum oxide and ferrous oxide is well within applicants invention. Therefore limitations of aluminum oxide and ferrous oxide in silica sand are viewed as inherent property. The prior art of record as applied against present claims therefore is still applicable against present claims.

In arguments dated 8/6/2004 the applicants raised following issues:

a) If one were to ordered silica sand without specifying the chemical content, it is probable, if not certain, that one would receive sand with excessive amount of aluminum oxide and ferrous oxide.

With respect to the above argument, the examiner disagrees. From the web printouts that applicants submitted on 6/1/2004 the following has been observed:

1st sand – silica sand – within limits

2nd sand – silica sand – within limits

3rd sand – silica sand – aluminum oxide 2.07 wt %

4th sand – sea sand – although not silica sand taught by the prior art it is still within limits

Sibelco sands – cannot be evaluated, since sand 5, sand 7 and sand 8 is not a proper description.

M31, M32 and M34 – silica sand – within limits

MAM1S – silica sand – within limits

MAM1 – silica sand – within limits

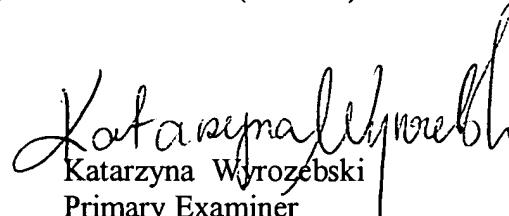
Granusil – quartz sand – not a sand of the prior art.

Out of all the silica sands applicants submitted only one had slightly higher aluminum content (2.07 wt %).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Katarzyna Wyrozebski whose telephone number is (571) 272-1127. The examiner can normally be reached on Mon-Thurs 6:30 AM-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Katarzyna Wyrozebski
Primary Examiner
Art Unit 1714

March 24, 2005